HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3508 OF 1991.

Municipal Corporation of the
City of Pune, having their
head office at Shivaji Nagar,
Pune - 411 005. ..Petitioner.

Versus.

The United Western Co-operative
Housing Society Ltd.,
No.42/43, Plot No.3,
Maharshi Karve Nagar,
Pune - 411 029. ..Respondent.

Shri. R.M.Pethe i/b Shri. R.G.Ketkar for the Petitioner.

Shri. Anil V. Anturkar for the respondent.

CORAM: S.B.MHASE,J.

DATE : MARCH 8, 2006.

Oral judgment (Per S.B.Mhase,J.):

1. This petition is directed as against the judgment and order dated 12.4.1988 passed by the Small Causes Court, Pune in Municipal Appeal No. 70 of 1987 and also against the judgment and order dated 16.4.1990 passed by the 6th Additional District Judge, Pune in Civil Appeal No. 490 of 1988. Respondent, a co-operative housing society, had constructed a community hall on plot no.3 in Survey No. 42/43, Maharshi Karvenagar, Pune. The said hall is being constructed for

the specific purposes for fostering and encouraging the indoor games and alike community activities for the benefit of the members of the society. The nominal fees are being charged for the use of said hall. On the ground floor the respondent society has constructed five shops and they are let at the monthly rent of Rs.250/-. Since the rateable value of the said property was fixed at Rs.80,000/- and tax was imposed retrospectively from 1.4.1984, even though the actual assessment order was passed on 16th September 1987, the respondent - society challenged the said fixation of the rateable value by filing an appeal under section 406 of the Bombay Provincial Municipal Corporation Act. The said appeal was allowed by the Principal Judge, Small Causes Court, Pune, fixing the rateable value of the said property at Rs.37,290/- and set aside the order of the retrospective effect and directed that the taxes should be collected with effect from 1.4.1987. The petitioner challenged the said judgment and order by filing Civil Appeal No. 490 of 1988 before the District Judge Pune. It came up for hearing before the 6th Additional District Judge Pune. The said Court by judgment and order dated 16th April 1990 dismissed the appeal.

2. So far as evidence which has been led before the Principal Judge, Small Causes Court is concerned

there is only evidence led on behalf of the respondent. The petitioner has not entered into the witness box and/or tendered any document in support of its case.

3. So far as the five shops are concerned, the respondent is getting rent at the rate of Rs.250/- per month. This is an admitted position. If Rs.250/- is taken as rent of one shop, the yearly rental of that shop will be Rs.3,000/- and for all the five shops it will be Rs.15,000/-. Out of this reasonable rent, 15% will have to be deducted for the maintenance etc. Thus, the said amount comes to Rs.2,700/-. Therefore, the rateable value in respect of the five shops can be taken for the taxation purpose as Rs.12,300/-.

4. Learned counsel for the petitioner - Corporation is not objecting to such an assessment based on rental of Rs.250/- per month. But according to the learned counsel, apart from the amount of Rs.250/- the amount of interest towards the deposit which has been taken by the society from every tenant shall also be calculated in the reasonable rent. Such amount, according to the petitioner, is Rs.1040/- per month in respect of all the five shops. If the said amount is included in the actual rental paid, then the rateable value comes to Rs.23,350/- as is reflected from the

assessment order. However, the evidence in the present matter placed by the respondent shows that the respondent is getting Rs.250/- per month from each of the shop-keeper. There is denial of the interest being paid. The Corporation has also not brought on record material to establish that the interest free deposit have been accepted by the respondent - society. In the absence of any evidence in this respect, it is very difficult to accept the submission of the learned counsel that the interest free deposit shall also be taken into consideration for fixation of the rateable value. Therefore, that part of the submission is hereby rejected. In the result I find that the rateable value fixed by the trial court in respect of the five shops is rightly fixed.

5. Then comes the question in respect of the community hall. The area of the said community hall is 5,340 sq. ft. Since the case made out by the respondent is that it is being used for the charitable purpose and nominal fees are charged and it is a facility extended to the members of the society, the Principal Judge, Small Causes Court, Pune has assessed it at Rs. 0.60 per sq. ft. and thus has calculated the annual rent of the suit premises at Rs.28,872/- and after deduction of 15% towards the repairs and maintenance charges the rateable

value is fixed at Rs.24,540/-.

6. The contention of the learned counsel for the petitioner is that the said hall is being used for the commercial purpose like marriage, etc., therefore, the rateable value of the said property shall be fixed at the commercial rate. It requires to be stated that before the Principal Judge, Small Causes Court, Pune and the Appellate Court it is an admitted fact on behalf of the petitioner that said premises are being used by the society for badminton and table tennis activities or at the most for the recreational activities. It was not the case of the petitioner that the said premises is being used for the commercial purpose. That case is tried to be developed in the petition by placing on record some photographs wherein the people are shown taking food. Thereby the learned counsel tried to persuade this court that it is a marriage ceremony which is a commercial purpose. However, in my opinion, said photographs cannot be taken into evidence at this stage. In fact, the petitioner had an opportunity to lead evidence in trial court but for the reasons best known to him he has not led the evidence. Apart from that, by simply looking at the photographs it cannot be inferred that the use of the said hall is for commercial purpose. Because it is equally possible that the occasion may be of dinner or

lunch given by members of the said society and/or it may be marriage in the family of the member of the society. Therefore, photographs will not take the case of the petitioner to infere that it is a commercial activity so as to fix up the rateable value in this respect. Both the Courts below have found that the activity is a public charitable activity. Said activities are exempted under section 132 of the B.P.M.C. Act and that has been analysed by the appellate court. This court is not desirous of going into much details in this respect. Ultimately, I find that the rateable value fixed by the trial court and confirmed by the appellate court is just and proper and no interference is called for by this Court.

7. Then learned counsel appearing on behalf of the petitioner submitted that the notice for imposition of tax was issued on 13.3.1984, therefore, the petitioner is entitled to impose the tax with effect from 1st of April 1984. However, I need not to go into this argument because the said question has already been answered in Full Bench judgment of this Court reported in **BLR 1971 Vol.-LXXIV, page 469 in the matter of The Sholapur Municipal Corporation v/s. Ramchandra Ramappa Madgundi.**

It has been observed by the Full bench that:

> "An alternation made under section 82(3) of the Bombay Municipal Boroughs Act, 1925, in the assessment list prepared under section 78 of the Act does not become effective for any period prior to the commencement of the official year in which the alternation in the assessment list is made and, therefore, the Municipality is not entitled to levy tax for the official year or any part thereof which has already expired.
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> The alternation becomes effective from the commencement of the official year in which it is made so as to entitled the Municipality to levy tax with effect from the commencement of that year only."

. This judgment has been followed by the Division Bench of this Court in **AIR-2002 Bom 244 in the matter of Satish Dattatray Shivalkar v/s. Pimpri Chinchwad Municipal Corporation and another**. Therefore, this Court finds that the Courts below were justified in imposing tax from the date of the order, and not allowing the petitioner to impose the tax retrospectively. In the result, petition is without any merit. It is hereby dismissed. Rule is discharged.

(S.B.MHASE, J.)